

Nabil L. Abu-Assal (SBN 136764)
nabil@cypressllp.com
Douglas P. Roy (SBN 241607)
doug@cypressllp.com
Daniel A. Corren (SBN 260486)
dan@cypressllp.com
CYPRESS LLP
1925 Century Park East, Suite 1700
Los Angeles, CA 90067
Telephone: 424-901-0123
Facsimile: 424-750-5100

Michael J. Smith (Pro Hac Vice)
msmith@mikesmithlaw.com
**THE LAW FIRM OF MICHAEL J. SMITH
AND ASSOCIATES, PLLC**
70 Macomb Place, Suite 200
Mt. Clemens, MI 48043
Telephone: (586) 254-0200

Attorneys for Defendant
PATRICK M. BYRNE

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ROBERT HUNTER BIDEN

Plaintiff,

v.

PATRICK M. BYRNE

Defendant.

Case No.: 2:23-cv-09430-SVW-PD

**DEFENDANT'S ANSWER AND
AFFIRMATIVE DEFENSES**

Complaint Filed: November 8, 2023

1 NOW COMES undersigned, Attorneys for Defendant, Patrick M. Byrne, and
2 for his Answer to Plaintiff's Complaint in the above-captioned case, states as
3 follows:

4 INTRODUCTION

5 1. In the Answer to Paragraph one (1) of Plaintiff's Complaint, Defendant
6 admits that Plaintiff brings an action for defamation. Defendant neither admits nor
7 denies that he posted statements on social media concerning Plaintiff. Defendant
8 denies the balance of the allegations.

9 2. In Answer to Paragraph two (2) of Plaintiff's Complaint, Defendant
10 neither admits nor denies that he posted statements on social media concerning
11 Plaintiff. Defendant denies the balance of the allegations in this paragraph.

12 3. In Answer to Paragraph three (3) of Plaintiff's Complaint, Defendant
13 denies the allegations in this paragraph.

14 JURISDICTION AND VENUE

15 4. In Answer to Paragraph four (4) of Plaintiff's Complaint, Defendant
16 admits that this court has jurisdiction over the subject matter of this action pursuant
17 to 28 U.S.C. § 1332.

18 5. In Answer to Paragraph five (5) of Plaintiff's Complaint, Defendant
19 admits that he is a resident and citizen of the State of Florida. Defendant neither
20 admits nor denies the remaining allegations contained herein, for the reason that the
21 Defendant lacks sufficient information and knowledge in which to form a belief as
22 to the truth of the allegations.

23 6. In Answer to Paragraph six (6) of Plaintiff's Complaint, Defendant
24 denies the allegations contained therein.

25 7. In Answer to Paragraph seven (7) of Plaintiff's Complaint, Defendant
26 neither admits nor denies the allegations contained herein, for the reason that the
27 Defendant lacks sufficient information and knowledge in which to form a belief as
28 to the truth of the allegations therein.

8. In Answer to Paragraph eight (8) of Plaintiff's Complaint, Defendant vehemently denies that he acted illegally and denies that he has subjected himself to jurisdiction in the State of California. Moreover, the Defendant vehemently denies Plaintiff suffers from damages attributable to Defendant. If Plaintiff suffers and continues to suffer damages as alleged by Plaintiff, then those alleged damages are a direct result of Plaintiff's actions and conduct in this world. As to the balance of the allegations in this paragraph, Defendant neither admits nor denies the allegations contained herein, for the reason that the Defendant lacks sufficient information and knowledge in which to form a belief as to the truth of the allegations therein and leaves Plaintiff to its proofs.

PARTIES

9. In Answer to Paragraph nine (9) of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained herein, for the reason that the Defendant lacks sufficient information and knowledge in which to form a belief as to the truth of the allegations therein.

10. In Answer to Paragraph ten (10) of Plaintiff's Complaint, Defendant admits that he is a resident of the State of Florida only and that he was the chief executive officer of Overstock.com until August of 2019. Furthermore, Defendant admits that he was interviewed by Capitol Times Magazine in 2023. Furthermore, as to the balance of the allegations in this paragraph, Defendant neither admits nor denies the allegations contained herein, for the reason that the Defendant lacks sufficient information and knowledge in which to form a belief as to the truth of the allegations therein.

11. In Answer to Paragraph eleven (11) of Plaintiff's Complaint, Defendant denies that he is a "serial liar". As to the balance of this paragraph, Defendant neither admits nor denies the allegations contained herein, for the reason that the Defendant lacks sufficient information and knowledge in which to form a belief as to the truth of the allegations therein.

1 12. In Answer to Paragraph twelve (12) of Plaintiff's Complaint,
2 Defendant neither admits nor denies the allegations contained herein, for the reason
3 that the Defendant lacks sufficient information and knowledge in which to form a
4 belief as to the truth of the allegations therein.

5 13. In Answer to Paragraph thirteen (13) of Plaintiff's Complaint,
6 Defendant admits that he has currently more than 300,000 followers on his social
7 media platform. As to the balance of this paragraph, Defendant neither admits nor
8 denies the allegations contained herein, for the reason that the Defendant lacks
9 sufficient information and knowledge in which to form a belief as to the truth of the
10 allegations therein.

11 14. In Answer to Paragraph fourteen (14) of Plaintiff's Complaint,
12 Defendant neither admits nor denies the allegations contained herein, for the reason
13 that the Defendant lacks sufficient information and knowledge in which to form a
14 belief as to the truth of the allegations therein.

15 15. In Answer to Paragraph fifteen (15) of Plaintiff's Complaint,
16 Defendant neither admits nor denies the allegations contained herein, for the reason
17 that the Defendant lacks sufficient information and knowledge in which to form a
18 belief as to the truth of the allegations therein.

19 16. In Answer to Paragraph sixteen (16) of Plaintiff's Complaint,
20 Defendant neither admits nor denies the allegations contained herein, for the reason
21 that the Defendant lacks sufficient information and knowledge in which to form a
22 belief as to the truth of the allegations therein.

23 17. In Answer to Paragraph seventeen (17) of Plaintiff's Complaint,
24 Defendant denies that he has made defamatory statements about Plaintiff. As to the
25 balance of this paragraph, Defendant neither admits nor denies the allegations
26 contained herein, for the reason that the Defendant lacks sufficient information and
27 knowledge in which to form a belief as to the truth of the allegations therein.
28

1 18. In Answer to Paragraph eighteen (18) of Plaintiff's Complaint,
2 Defendant admits that he appeared in an interview in Capitol Times Magazine and
3 denies the rest of the allegations contained therein for the reason the same are
4 untrue.

5 19. In Answer to Paragraph nineteen (19) of Plaintiff's Complaint,
6 Defendant admits only that he appeared in an interview in Capitol Times Magazine,
7 the contents of which speak for themselves. As to the balance of this paragraph,
8 Defendant neither admits nor denies the allegations contained herein, for the reason
9 that the Defendant lacks sufficient information and knowledge in which to form a
10 belief as to the truth of the allegations therein.

11 20. In Answer to Paragraph twenty (20) of Plaintiff's Complaint,
12 Defendant admits only that he appeared in an interview in Capitol Times Magazine,
13 the contents of which speak for themselves. As to the balance of the allegations,
14 Defendant neither admits nor denies the allegations contained herein, for the reason
15 that the Defendant lacks sufficient information and knowledge in which to form a
16 belief as to the truth of the allegations therein.

17 21. In Answer to Paragraph twenty-one (21) of Plaintiff's Complaint,
18 Defendant admits only that he appeared in an interview in Capitol Times Magazine,
19 the contents of which speak for themselves. Defendant denies that he made any
20 false and/or defamatory statements as stated herein by Plaintiff.

21 22. In Answer to Paragraph twenty-two (22) of Plaintiff's Complaint,
22 Defendant admits only that he appeared in an interview in Capitol Times Magazine,
23 the contents of which speak for themselves. Defendant denies that he made any
24 intentional false statements about Plaintiff as stated herein. As to the balance of this
25 paragraph, Defendant neither admits nor denies the allegations contained herein, for
26 the reason that the Defendant lacks sufficient information and knowledge in which
27 to form a belief as to the truth of the allegations therein.
28

23. In Answer to Paragraph twenty-three (23) of Plaintiff's Complaint, Defendant admits only that he appeared for an interview with Emerald Robinson on "The Absolute Truth," the contents of which speak for themselves. Defendant denies that he has made any defamatory statements or false accusations against Plaintiff. As to the balance of this paragraph, Defendant neither admits nor denies the allegations contained herein, for the reason that the Defendant lacks sufficient information and knowledge in which to form a belief as to the truth of the allegations therein.

24. In Answer to Paragraph twenty-four (24) of Plaintiff's Complaint, Defendant admits only that he appeared for a follow-up interview with Emerald Robinson on "The Absolute Truth," the contents of which speak for themselves. Defendant denies he made any defamatory charges as alleged by Plaintiff in this paragraph. As to the balance of this paragraph, Defendant neither admits nor denies the allegations contained herein, for the reason that the Defendant lacks sufficient information and knowledge in which to form a belief as to the truth of the allegations therein.

25. In Answer to Paragraph twenty-five (25) of Plaintiff's Complaint, Defendant admits that he appeared in an interview in Capitol Times Magazine, the contents of which speak for themselves. Defendant admits that he appeared on The Alex Jones Show in July of 2023, the contents of which speak for themselves. As to the balance of this paragraph, Defendant neither admits nor denies the allegations contained herein, for the reason that the Defendant lacks sufficient information and knowledge in which to form a belief as to the truth of the allegations therein.

26. In Answer to Paragraph twenty-six (26) of Plaintiff's Complaint, Defendant denies the allegations contained therein.

27. In Answer to Paragraph twenty-seven (27) of Plaintiff's Complaint, Defendant neither admits nor denies that he posted statements on social media concerning Plaintiff. Defendant denies he has made any false and defamatory

1 statements about Plaintiff. To the extent that the remaining allegations in this
2 paragraph contain mixed statements of fact and assertions of law, Defendant neither
3 admits nor denies the allegations.

4 28. In Answer to Paragraph twenty-eight (28) of Plaintiff's Complaint,
5 Defendant denies the allegations contained therein. As to the balance of the
6 allegations in this paragraph that contain mixed statements of fact and assertions of
7 law, Defendant neither admits nor denies the allegations.

8 29. In Answer to Paragraph twenty-nine (29) of Plaintiff's Complaint,
9 Defendant denies the allegations contained therein.

10 30. In Answer to Paragraph thirty (30) of Plaintiff's Complaint, Defendant
11 neither admits nor denies the allegations contained herein, for the reason that the
12 Defendant lacks sufficient information and knowledge in which to form a belief as
13 to the truth of the allegations therein.

14 31. In Answer to Paragraph thirty-one (31) of Plaintiff's Complaint,
15 Defendant neither admits nor denies the allegations contained herein, for the reason
16 that the Defendant lacks sufficient information and knowledge in which to form a
17 belief as to the truth of the allegations therein.

18 **FIRST CLAIM FOR RELIEF**

19 **(Defamation)**

20 **(Against Defendant Byrne)**

21 32. Defendant incorporates by reference paragraphs 1–31 above, as it set
22 forth fully herein word for word.

23 33. In Answer to Paragraph thirty-three (33) of Plaintiff's Complaint,
24 Defendant denies the allegations contained therein and that he has not made any
25 false statements about Plaintiff. Defendant admits that he appeared in an interview
26 in Capitol Times Magazine and neither admits nor denies that he posted statements
27 on social media, and that such statements speak for themselves. As to the remaining
28

1 allegations in this paragraph that contain mixed statements of fact and assertions of
2 law, Defendant neither admits nor denies the allegations contained therein.

3 34. In Answer to Paragraph thirty-four (34) of Plaintiff's Complaint,
4 Defendant denies that he has made any defamatory about Plaintiff. As to the
5 remaining allegations in this paragraph that contain mixed statements of fact and
6 assertions of law, Defendant neither admits nor denies the allegations.

7 35. In Answer to Paragraph thirty-five (35) of Plaintiff's Complaint,
8 Defendant denies the allegations that he made any false statements about Plaintiff.
9 As to the balance of this paragraph that contain mixed statements of fact and
10 assertions of law, Defendant neither admits nor denies the allegations.

11 36. In Answer to Paragraph thirty-six (36) of Plaintiff's Complaint,
12 Defendant neither admits nor denies the allegations contained herein, for the reason
13 that the Defendant lacks sufficient information and knowledge in which to form a
14 belief as to the truth of the allegations therein and leaves Plaintiff to its proofs.

15 37. In Answer to Paragraph thirty-seven (37) of Plaintiff's Complaint,
16 Defendant neither admits nor denies the allegations contained herein, for the reason
17 that the Defendant lacks sufficient information and knowledge in which to form a
18 belief as to the truth of the allegations therein.

19 38. In Answer to Paragraph thirty-eight (38) of Plaintiff's Complaint,
20 Defendant denies that he has made defamatory statements about Plaintiff. As to the
21 balance of the allegations herein, Defendant neither admits nor denies the
22 allegations contained herein, for the reason that the Defendant lacks sufficient
23 information and knowledge in which to form a belief as to the truth of the
24 allegations therein.

25 39. In Answer to Paragraph thirty-nine (39) of Plaintiff's Complaint,
26 Defendant denies that he has made false statements about Plaintiff. As to the
27 balance of the allegations herein, Defendant neither admits nor denies the
28 allegations contained herein, for the reason that the Defendant lacks sufficient

1 information and knowledge in which to form a belief as to the truth of the
2 allegations therein.

3 40. In Answer to Paragraph forty (40) of Plaintiff's Complaint, Defendant
4 denies that he has made false claims as stated in this paragraph. As to the balance of
5 the allegations in this paragraph that contain mixed statements of fact and assertions
6 of law, Defendant neither admits nor denies the allegations.

7 41. In Answer to Paragraph forty-one (41) of Plaintiff's Complaint,
8 Defendant denies that he has made false accusations. As to the balance of the
9 allegations in this paragraph that contain mixed statements of fact and assertions of
10 law, Defendant neither admits nor denies the allegations.

11 42. In Answer to Paragraph forty-two (42) of Plaintiff's Complaint,
12 Defendant denies that he has made false claims as stated in this paragraph. As to the
13 balance of the allegations in this paragraph that contain mixed statements of fact
14 and assertions of law, Defendant neither admits nor denies the allegations.

15 43. In Answer to Paragraph forty-three (43) of Plaintiff's Complaint,
16 Defendant denies that he has made false statements as stated in this paragraph. As
17 to the balance of the allegations in this paragraph that contain mixed statements of
18 fact and assertions of law, Defendant neither admits nor denies the allegations.

19 44. In Answer to Paragraph forty-four (44) of Plaintiff's Complaint,
20 Defendant denies that he has made false accusations as stated in this paragraph. As
21 to the balance of the allegations in this paragraph that contain mixed statements of
22 fact and assertions of law, Defendant neither admits nor denies the allegations.

23 45. In Answer to Paragraph forty-five (45) of Plaintiff's Complaint,
24 Defendant denies that he acted wrongfully as stated herein. Moreover, the
25 Defendant denies Plaintiff suffers from damages attributable to Defendant.

26 46. In Answer to Paragraph forty-six (46) of Plaintiff's Complaint,
27 Defendant denies the allegations contained therein.
28

WHEREFORE, Defendant respectfully requests that Plaintiff's complaint for damages for defamation be dismissed with prejudice and without recovery of any kind and that Defendant be awarded such additional equitable and legal relief as is appropriate including but not limited to costs and reasonable attorney fees so wrongfully suffered.

Defendant, Patrick M. Byrne, by his Attorneys, incorporates by reference his answer to Plaintiff's Complaint for Damages for Defamation and states unto this Honorable Court the following as his Affirmative Defenses:

Plaintiff, as a public figure, assumed the risk associated with his behavior and conduct, and that he would subject himself to scrutiny and criticism in the public forum.

The alleged defamatory statements made by Defendant are true and thus serve as an absolute defense to defamation and are protected speech.

Defendant has the right to petition and of free speech under the constitutions of the United States and the State of California, and this fundamental right serves as an affirmative defense to Plaintiff's allegations and claims.

At all times, Defendant acted in good faith and without malice.

Plaintiff has failed to state a claim and/or cause of action.

1 Plaintiff's claims are barred in whole or in part by his unclean hands.

2 **SEVENTH AFFIRMATIVE DEFENSE: FAILURE TO MITIGATE**

3 Plaintiff has failed to mitigate his alleged damages.

4
5
6 **EIGHTH AFFIRMATIVE DEFENSE: CLAIM IS TIME BARRED**

7 Plaintiff's claims are barred by the applicable Statute of Limitations and/or
8 the Doctrine of Latches.

9 **ADDITIONAL AFFIRMATIVE DEFENSES**

10 Defendant reserves the right to add additional defenses as they become
11 known through discovery up until the time of trial.

12
13 WHEREFORE, Defendant prays as follows:

- 14 1. That Plaintiff take nothing by reason of its complaint, that judgement be
15 rendered in favor of Defendant;
16 2. That Defendant be awarded his costs of suit incurred in defense of this
17 action, including his reasonable attorneys' fees; and
18 3. For such other relief as the Court deems proper.

19
20
21 Dated: February 14, 2024 By: /s/ Michael J. Smith

22 Michael J. Smith

23 Attorney for Defendant
24 PATRICK M. BYRNE
25
26
27
28